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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0769 (AJN)

5 ANTHONY MURGIO, YURI LEBEDEV
6 and TREVON GROSS,

7 Defendants.

8 -----x

9 March 4, 2016
10 2:52 p.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: EUN YOUNG CHOI

DANIEL S. NOBLE

18 Assistant United States Attorneys

19 ROTHMAN, SCHNEIDER, SOLOWAY & STERN LLP

Attorneys for Defendant Anthony Murgio

20 BY: ROBERT A. SOLOWAY

LUCAS ANDERSON

21 - and -

BAKER MARQUART LLP

22 BY: BRIAN E. KLEIN (via speakerphone)

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APPEARANCES CONTINUED

CREIZMAN PLLC

Attorneys for Defendant Yuri Lebedev

BY: ERIC M. CREIZMAN
CAROLINE J. POLISI

KROVATIN KLINGEMAN LLC

Attorneys for Defendant Trevon Gross

BY: KRISTEN SANTILLO

- also present -

SA Patrick Hoffman, FBI

oOo

(Mr. Soloway not present)

THE CLERK: U.S. v. Anthony Murgio, et al.

All parties, please state your name for the record,
starting with the government.

MS. CHOI: Good afternoon, your Honor. Eun Young Choi
and Daniel S. Noble on behalf of the government. With us at
counsel table is FBI Special Agent Patrick Hoffman.

THE COURT: Good afternoon to the three of you.

MR. NOBLE: Good afternoon, your Honor.

MR. ANDERSON: Good afternoon, your Honor. Lucas
Anderson here for Robert Soloway, who is in another courtroom
in this building and he may be down in a few minutes, here for
Mr. Murgio.

THE COURT: Good afternoon to you both. And,
Mr. Anderson, we just noted that we did get the note that Judge
Engelmayer was keeping Mr. Soloway and that you would be here

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1 today, and we note that there is not a notice of appearance on
2 your behalf on the docket.

3 MR. ANDERSON: We will remedy that as soon as
4 possible.

5 THE COURT: Thank you.

6 MR. CREIZMAN: Good afternoon, your Honor. Eric
7 Creizman on behalf of Yuri Lebedev and with me is attorney
8 Caroline Polisi from my office.

9 THE COURT: Good afternoon to the three of you.

10 MR. KLEIN: Good afternoon, your Honor. This is Brian
11 Klein (unintelligible) on the phone from Los Angeles, and I
12 represent also Mr. Murgio.

13 THE COURT: All right. Thank you, Mr. Klein. Good
14 afternoon.

15 And go ahead.

16 MS. SANTILLO: Good afternoon, your Honor. My name is
17 Kristen Santillo, from Krovatin Klingeman, on behalf of Trevon
18 Gross.

19 THE COURT: Good afternoon to you both. Please be
20 seated.

21 I believe the first matter of business for today's
22 conference is, Ms. Choi, to do an arraignment on the
23 Superseding Indictment.

24 MS. CHOI: Yes, your Honor.

25 THE COURT: All right. So I will note that -- and,

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1 Ms. Choi, the Superseding Indictment adds Mr. Gross as a
2 defendant and indicates charges with respect to him. With
3 respect to the existing defendants, there are no changes, is
4 that correct?

5 MS. CHOI: That is correct, your Honor.

6 THE COURT: All right. Thank you. But I will conduct
7 the arraignment on the Superseding Indictment with respect to
8 all three defendants and I'll begin with Mr. Gross.

9 Well, for everyone it is the same set of questions, to
10 confirm that you have received a copy of the Superseding
11 Indictment, that you have had some opportunity to review it
12 with your attorney. I'll ask whether you want me to read the
13 indictment out loud or if you waive the public reading, and
14 then I'll ask if you would like me to -- if you wish me to
15 enter a plea of not guilty on your behalf.

16 So, Mr. Gross, can I confirm that you have received a
17 copy of the Superseding Indictment? At the top it is indicated
18 as S2 15 Cr. 769. Did you receive it, sir?

19 DEFENDANT GROSS: Yes, I have.

20 THE COURT: Did you have some time to review it with
21 your attorney?

22 DEFENDANT GROSS: Yes, your Honor.

23 THE COURT: Do you waive the public reading?

24 DEFENDANT GROSS: Yes, your Honor.

25 THE COURT: Do you wish that I enter a plea of not

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1 guilty?

2 DEFENDANT GROSS: Yes, your Honor.

3 THE COURT: Thank you, sir. You may be seated.

4 Mr. Murgio, have you received a copy of the
5 Superseding Indictment?

6 DEFENDANT MURGIO: Yes, your Honor.

7 THE COURT: And you have had some time to review it
8 with your attorney?

9 DEFENDANT MURGIO: Yes, your Honor.

10 THE COURT: Do you waive the public reading?

11 DEFENDANT MURGIO: I do.

12 THE COURT: And do you wish me to enter a plea of not
13 guilty?

14 DEFENDANT MURGIO: Yes, your Honor.

15 THE COURT: Thank you.

16 Mr. Lebedev -- I know I asked this the last time. Am
17 I saying your name correctly?

18 DEFENDANT LEBEDEV: Yes.

19 THE COURT: You received a copy of the Superseding
20 Indictment?

21 DEFENDANT LEBEDEV: I did, your Honor.

22 THE COURT: And have you had some opportunity to
23 review it with your attorney?

24 DEFENDANT LEBEDEV: Yes, your Honor.

25 THE COURT: Do you waive the public reading?

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1 DEFENDANT LEBEDEV: Yes, your Honor.

2 THE COURT: And do you wish that I enter a plea of not
3 guilty?

4 DEFENDANT LEBEDEV: Yes, your Honor.

5 THE COURT: Thank you. Please be seated.

6 All right. So I think what makes sense next is,
7 Ms. Choi, if you can provide a status update and particularly
8 with respect to where we are in terms of the discovery that has
9 been made, which we've talked at earlier points about its
10 volume and how it would be provided to defendants. So let's
11 begin there.

12 MS. CHOI: Yes, your Honor. Discovery was
13 completed -- substantially completed in January as to the
14 individual two defendants in the case. That included the
15 applications that went along with any search warrants, a mass
16 of bank records, financial records and the like, that are being
17 governed by the protective order your Honor put in place, as
18 well as the electronic evidence that belonged to each
19 defendant.

20 At the time, the government asked that the defendants
21 determine if there are any materials therein that would be
22 either privileged and thus should be produced to the
23 codefendants or contained otherwise sensitive materials that
24 they wanted to withhold from discovery. The attorneys are in
25 the midst of doing that. I think we are hopeful that will be

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1 done by early next week such that the entire set can be then
2 distributed to the rest of the codefendants.

3 As you know, Mr. Gross was arraigned -- I'm sorry, was
4 presented initially yesterday, and I think your Honor has a
5 copy of the proposed protective order that is the same terms as
6 what you've already entered. Ms. Santillo and Mr. Gross have
7 agreed to the terms of that protective order, but we've already
8 started discovery with regard to Mr. Gross and we hope to
9 complete that process in the next two weeks.

10 With regard to electronic discovery, we're hopeful
11 that we can do that also within that timeframe with the caveat
12 that if it turns out that there is a large breadth of documents
13 that are being withheld for whatever reason and it may take us
14 a little bit more time to work that out, it may be slightly
15 delayed, but we are optimistic that it will be done quite
16 quickly, your Honor.

17 THE COURT: OK. Discovery with respect to Mr. Gross
18 is the same categories as discovery with respect to the other
19 defendants?

20 MS. CHOI: It is. There were some documents that we
21 held back from discovery to Mr. Murgio and Mr. Lebedev because
22 they pertain specifically to Mr. Gross. We'll produce those
23 within the next two weeks.

24 THE COURT: OK. Any post-arrest statements with
25 respect to Mr. Gross?

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1 MS. CHOI: Yes. We'll produce any post-arrest
2 statements. I do not believe that he had any, as he was
3 represented by counsel, but I will double-check on that.

4 (Mr. Soloway present)

5 THE COURT: Thank you. All right. So that's our
6 discovery schedule. Anything defense counsel wish to raise
7 with respect to the discovery schedule or proceeding under any
8 concerns?

9 MR. CREIZMAN: Your Honor, nothing other than the
10 severance motion that is pending before the Court. I mean --
11 and to the extent that we need to renew it based on the
12 Superseding Indictment, we renew our severance motion for the
13 same reasons set forth in our papers.

14 THE COURT: OK. I am prepared to give an oral ruling
15 on the severance motion. I can do that now.

16 This is Mr. Lebedev's motion for severance. He's
17 charged with one count of conspiring to make corrupt payments
18 with intent to influence an officer of a financial institution,
19 in violation of 18 U.S.C. Section 371. This charge stems from
20 Mr. Lebedev's alleged role in the operation of Coin.mx, a
21 website that the government claims served as an illegal Bitcoin
22 exchange. The government contends that Mr. Lebedev conspired
23 with his codefendant Mr. Murgio and others to bribe the
24 executive of a credit union in New Jersey, and the purpose of
25 the bribe, as alleged, was to gain control of the credit union,

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1 which, as alleged, aided the conspiracy in processing
2 transactions for the illegal Bitcoin scheme.

3 Mr. Lebedev was originally charged pursuant to a
4 Superseding Indictment on December 1, 2015. I've just
5 arraigned him on the Superseding Indictment now, S2 15 Cr. 769.
6 At the time Mr. Lebedev was indicted, Mr. Murgio had already
7 been charged with one count of conspiring to make corrupt
8 payments with intent to influence an officer of a financial
9 institution, one count of actually making such payments, and
10 five other counts relating to his alleged role with Coin.mx.

11 As noted, I've arraigned both Mr. Lebedev and
12 Mr. Murgio and now Mr. Gross, the new codefendant, on this
13 second Superseding Indictment. And Mr. Gross is charged with
14 one count of receiving corrupt payments as an officer of a
15 financial institution with the intent to be influenced. The
16 second Superseding Indictment otherwise does not alter the
17 charges against Mr. Lebedev and Mr. Murgio.

18 Trial in this matter was set and scheduled for
19 October 31, 2016, and, as indicated, Mr. Lebedev has moved to
20 sever his trial from that of Mr. Murgio and now his additional
21 codefendant; in the alternative, to sever the trial of the
22 bribery counts from the trial of the remaining five counts in
23 the Indictment. Mr. Lebedev argues that a severance is
24 justified because a joint trial would cause him substantial
25 prejudice and because holding the trial in October of 2016 he

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1 indicates would violate his constitutional and statutory speedy
2 trial rights. For the reasons that I'm about to explain, the
3 motion is denied.

4 Rule 14 of the Federal Rules of Criminal Procedure
5 permits a court to "sever the defendants' trials, or provide
6 any other relief that justice requires" if "consolidation for
7 trial appears to prejudice a defendant." Generally, "there is
8 a preference in the federal system for joint trials of
9 defendants who are indicted together." That preference is
10 particularly strong where, as here, the underlying crime
11 involves a common plan or scheme. United States v. Cardascia,
12 951 F.2d 474 (2d Cir. 1991). Nonetheless, a court may grant a
13 motion to sever if "there is a serious risk that a joint trial
14 will compromise a specific trial right of one of the
15 defendants, or prevent the jury from making a reliable judgment
16 about innocence or guilt." I'm citing the Supreme Court's
17 decision in Zafiro, 506 U.S. at 539.

18 The factors that courts in this district consider in
19 deciding whether to grant a severance include: First, "the
20 number of defendants and the number of counts" in the
21 indictment; second, the "complexity of the Indictment"; third,
22 the "estimated length of the trial"; fourth, differences
23 between the level of involvement of the defendant "in the
24 overall scheme"; fifth, "possible conflict between various
25 defense theories"; and sixth, prejudice that would result from

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1 evidence that is "admissible as to some defendants, but not
2 others." No one factor is dispositive, however, and the
3 ultimate decision whether to grant severance rests with the
4 discretion of the trial court.

5 Applying the factors that I have indicated to
6 Mr. Lebedev's case, it is clear that this is not one of the
7 rare instances in which I must sever the defendant's trial. As
8 an initial matter, Mr. Lebedev does not contest that several
9 factors are inapplicable here. First, with respect to the
10 number of defendants, there were two and now there are three
11 defendants charged in this case, which is not an unmanageable
12 or a particularly high number; second, Mr. Lebedev does not
13 argue that the indictment is particularly complex; and,
14 finally, Mr. Lebedev never suggests that there may be a
15 conflict between the defense theories that he and Mr. Murgio
16 and presumably now Mr. Gross will put forward.

17 The arguments on the remaining factors that
18 Mr. Lebedev makes -- the length of trial, the differences
19 between the level of involvement of the defendants in the
20 overall scheme, and the prejudice that would result from
21 evidence that would be admissible, he says, with respect to
22 Murgio but not with respect to Lebedev -- these all revolve
23 around the basic claim that there will be considerable evidence
24 presented at a joint trial that would be irrelevant to the one
25 count for which Mr. Lebedev is charged and that will be

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1 inflammatory and unduly prejudicial.

2 Specifically, he contends that the government will
3 introduce evidence that Murgio and others miscoded credit and
4 debt card transactions to obscure Bitcoin transactions,
5 evidence of misrepresentations to financial institutions,
6 evidence that Murgio and others communicated with Coin.mx
7 customers and instructed them to lie to financial institutions,
8 and evidence that Murgio structured wire transfers to prevent
9 financial institutions from discovering that the transactions
10 were facilitated by an unlicensed money transmitting business.
11 By contrast, Lebedev suggests that the government's evidence in
12 a bribery trial against him would be limited to witnesses
13 testifying about payments that were made, the actions that the
14 defendants requested in exchange for those payments, some
15 limited documentary evidence, and a recorded conversation.

16 The government, however, contends that there would be
17 substantial overlap between the evidence adduced at a trial of
18 Mr. Murgio and the evidence at a separate trial of Lebedev.
19 The government claims that it will demonstrate that Lebedev
20 aided Murgio in the building, operation, and concealment of
21 Coin.mx, and that it will introduce evidence concerning the
22 entire operation of Coin.mx. This evidence, the government
23 argues, would be both relevant and highly probative of
24 Lebedev's corrupt intent and will therefore aid in the
25 government's efforts to show that Lebedev conspired to bribe

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1 the Credit Union executive.

2 I agree that much of the evidence as proffered and
3 presented to me at this stage with respect to the operation of
4 Coin.mx may be relevant to Mr. Lebedev. As the Second Circuit
5 has explained, there is value in introducing evidence that will
6 "enable the jury to understand the complete story of the crimes
7 charged," or "how the illegal relationship between
8 [co-conspirators] developed." See United States v. Reifler,
9 446 F.3d 65, 92 (2d Cir. 2006). But more to the point,
10 evidence that Mr. Lebedev knew about or participated in any
11 efforts to conceal an illegal Bitcoin operation would be
12 relevant in proving the count that he is charged with. The
13 underlying bribery offense at issue here, i.e., the object of
14 the charged conspiracy, prohibits corruptly giving something of
15 value to the agent of a financial institution in connection
16 with any businesses of that institution. 18 U.S.C. Section
17 215(a). Any evidence that Lebedev was aware of efforts to
18 conceal Coin.mx's alleged illegal activity would tend to prove
19 that the conspiracy was carried out with corrupt intent.

20 To be sure, as Mr. Lebedev points out, the government
21 does not need to prove that the object of the conspiracy was to
22 conceal an illegal Bitcoin operation in order to prove that the
23 defendants acted "corruptly." Rather, "[t]he motive to act
24 corruptly is ordinarily a hope or expectation of either
25 financial gain or other benefit to oneself or some profit or

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1 benefit to another." United States v. McElroy, 910 F.2d at
2 1021 (2d Cir. 1990). But evidence that the alleged
3 conspirators were covering up an illegal Bitcoin operation
4 would certainly make it more probable that they had agreed to
5 make payments to the Credit Union executive for "financial
6 gain" or some "other benefit."

7 Lebedev further argues that the government has no
8 evidence that he had any knowledge of the illegal nature of
9 Coin.mx. The government disputes this characterization,
10 claiming that Lebedev and Murgio had numerous conversations
11 about the coding of the Coin.mx website to ensure that an
12 Internet search engine would not realize that Coin.mx was
13 operating through multiple connected sites. Additionally, the
14 government claims that Lebedev proposed to Murgio that Coin.mx
15 offer exchange services through Russian payment processors so
16 that "Russians can...wash money as well." And that's a quote
17 from the opposition brief. This suggests that much of the
18 evidence that the government hopes to introduce to show how the
19 alleged conspirators concealed an illegal Bitcoin operation
20 would presumably be admissible at a separate trial of
21 Mr. Lebedev. If so, then this case does not fall into the
22 category of cases where there is a substantial quantity of
23 evidence that is admissible as to some defendants but not
24 others. Similarly, if the previously described evidence is
25 admissible, then Lebedev's claims that a joint trial would take

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1 too long and that the lion's share of the evidence would be
2 directed at Murgio, that loses force. Accordingly, the factors
3 that I indicated earlier and outlined in the Ramos decision do
4 not support granting a severance.

5 But even if Mr. Lebedev is correct that a substantial
6 portion of the government's evidence will not pertain to him --
7 and, as I've said, I don't, based on what's in front of me,
8 understand that to be the case -- nevertheless, severance is
9 still not necessary. For starters, the Court can avoid the
10 risk of any "spillover prejudice" by "explicitly instructing
11 the jury to consider the defendants individually." See, United
12 States v. Spinelli, 352 F.3d 48 (2d Cir. 2003). Limiting
13 instructions are the "preferred device for curing any
14 prejudicial spillover" when compared with the far more
15 "burdensome" and "extreme" remedy of severance. Ramos, 346
16 F.Supp.2d.

17 Moreover, the facts of this case are quite a distance
18 from the cases in this circuit where courts have decided to
19 sever the defendants' trials. Mr. Lebedev relies on cases such
20 as United States v. Stoecker, 920 F.Supp. 876; United States v.
21 Upton, 856 F.Supp. 727; United States v. Gallo, 668 F.Supp.
22 736, and United States v. Burke, 789 F.Supp.2d, and most of
23 those are from the Eastern District of New York. The first one
24 is from the Northern District of Illinois. But each one of
25 those cases relied on in Mr. Lebedev's briefs involved a

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1 substantial number of defendants a long and/or complex
2 indictment, a very lengthy trial, charges of violent crimes
3 that applied only to some defendants, or a subset of those
4 factors. Just to give one example, in Stoecker, there was a
5 98-page Indictment that included 58 counts, and the government
6 estimated the trial would last three months. There were 13
7 charged defendants in Upton and 16 in Gallo, and in Burke one
8 defendant was charged with two counts related to witness
9 tampering whereas the other defendants were charged with
10 participating in a three-decade RICO conspiracy that included
11 three murders, several robberies and assaults.

12 Here, by contrast, we now have three defendants, which
13 is not an unusually large number, eight counts in the most
14 recent Indictment, and the government has estimated that a
15 trial will last three to four weeks at most. And although
16 Mr. Lebedev tries to argue that conspiring to bribe a credit
17 union official is distinct from the other charges in the
18 Indictment, the bribery charge is closely related to the
19 overall scheme of operating and concealing an illegal money
20 transmitting business. In sum, this case does not present "a
21 serious risk that a joint trial would compromise" Mr. Lebedev's
22 trial rights, and a joint trial will not "prevent the jury from
23 making a reliable judgment about his guilt or innocence."
24 There is thus no need to sever Mr. Lebedev's trial under Rule
25 14.

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1 The same logic applies to Mr. Lebedev's alternative
2 request to sever the trial of the bribery counts for all the
3 defendants from the trial of the remaining five counts in the
4 Indictment. If the government will present evidence of the
5 scope of the alleged conspiracy in a separate trial of
6 Mr. Lebedev, it will certainly do so in a trial that also
7 includes Murgio. I will not grant severance on this
8 alternative ground.

9 Turning to Mr. Lebedev's speedy trial rights, he
10 claims that requiring him to wait to go to trial until
11 October 31, 2016, would violate both the Constitution and the
12 Speedy Trial Act. The Sixth Amendment guarantees that criminal
13 defendants "shall enjoy the right to a speedy...trial." And in
14 Barker v. Wingo, the Supreme Court identified four factors that
15 courts should consider when deciding whether a delay violates
16 the Constitution. Those factors are the "length of delay, the
17 reason for delay, the defendant's assertion of his right, and
18 prejudice to defendant."

19 Here, only the defendant's assertion of his speedy
20 trial right cuts in favor of Mr. Lebedev. Since his
21 arraignment, Mr. Lebedev has requested a trial date before
22 October 2016. The government characterizes his preferred trial
23 date as in "mid-July," which I believe was an accurate
24 description of his original request, but it is the case that
25 he's indicated he would prefer an even earlier trial date. But

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1 even if I were to grant -- if the Court were to schedule
2 Mr. Lebedev's trial as early as the end of May, there would
3 still be a gap of only five months between his preferred date
4 and the October 31st trial date currently on the calendar and
5 in total a gap of 11 months between the original indictment and
6 the October trial date. The parties dispute whether a delay of
7 more than eight months between indictment and trial is
8 presumptively prejudicial, citing the Second Circuit's decision
9 in Vassell, 970 F.2d 1162. But like the Court in Vassell, this
10 Court need not decide whether this delay is "presumptively
11 prejudicial," because even assuming it is, the analysis of the
12 remaining Barker factors does not favor Mr. Lebedev.

13 First, there are good reasons for trying this case in
14 October of this year. The materials turned over by the
15 government in discovery include terabytes of information, and
16 it requires substantial time for counsel for both defendants to
17 review that discovery, brief any pretrial motions and motions
18 in limine, and prepare for a three- to four-week trial.

19 Second, Mr. Lebedev has failed to show that he'll
20 suffer meaningful prejudice from the gap in time. Mr. Lebedev
21 is not incarcerated, and he has not argued that his defense
22 will be impaired, which the Court in barker called the "most
23 serious" form of prejudice, other than to suggest that he may
24 not be able to afford his retained counsel indefinitely. But
25 as the government notes, the Criminal Justice Act provides

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1 options for ensuring the adequacy of Mr. Lebedev's
2 representation, including the possibility of retaining his
3 current counsel.

4 To be sure, Mr. Lebedev has experienced what the
5 Second Circuit terms "non-trial-related hardships," United
6 States v. Cain, 671 F.2d 271. He points to the strain on his
7 reputation, his career, his family, and his education as
8 examples of the prejudice he has suffered and may suffer. But
9 the source of that prejudice seems principally to be the fact
10 of the charges against him rather than any additional delay of
11 several months in proceeding to trial in accordance with what
12 appears necessary in light of the many factors in this case and
13 the needs of codefendants in preparing for trial. Moreover, as
14 the government points out, the Second Circuit frequently has
15 declined to find a speedy trial violation in cases where the
16 defendant faced considerably greater prejudice than Mr. Lebedev
17 does here. For example, in Flowers v. Warden, the Second
18 Circuit found that the defendant's 17-month pretrial
19 incarceration did not violate his speedy trial rights, and the
20 cite for that case is 853 F.2d 131 (2d Cir. 1988). The Court
21 observed that this period of incarceration did not approach the
22 prejudice suffered by defendants in cases where the Second
23 Circuit had found speedy trial violations. Whatever prejudice
24 Mr. Lebedev will experience likewise falls short of the
25 prejudice that would be needed to tip the Barker factors in his

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1 favor. Accordingly, he has not shown a violation of his
2 constitutional speedy trial right.

3 And, finally, Mr. Lebedev has also not shown that the
4 eleven-month delay between his indictment and trial would
5 violate the Speedy Trial Act. Mr. Lebedev invokes 3161(h)(6)
6 of the Act, which allows for "[a] reasonable period of delay
7 when [a] defendant is joined for trial with a codefendant as to
8 whom the time for trial has not run and no motion for severance
9 has been granted." But that section is less applicable to
10 Mr. Lebedev than it would be to Mr. Murgio, who was indicted
11 before Mr. Lebedev and could in theory have been prejudiced by
12 the fact that Mr. Lebedev's speedy trial clock had not begun to
13 run when he was indicted. To the extent Mr. Lebedev relies on
14 the general unreasonableness of the length of time until trial
15 in this case, the speedy trial analysis that I explained
16 earlier makes clear that such a delay is reasonable in light of
17 the volume of discovery, the need to draft motions and prepare
18 for trial, and the level of prejudice, or lack thereof, to
19 Mr. Lebedev.

20 For the foregoing reasons, Mr. Lebedev's motion for
21 severance is denied.

22 All right. So we have our -- and I do want to make
23 sure, Ms. Santillo, that you are aware of the trial -- of the
24 schedule that's been set and give you an opportunity to raise
25 any issues with respect to that.

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1 MS. SANTILLO: Sure. We are aware of the trial date.
2 We were informed by the government. Today we received one CD
3 of documents that I believe is a minimal amount in connection
4 with the overall discovery.

5 THE COURT: Could you pull up a mic. Thank you.

6 MS. SANTILLO: I'm sorry.

7 THE COURT: Say that again.

8 MS. SANTILLO: I would just note that we received one
9 CD of discovery from the government today that I have not yet
10 had an opportunity to look at. I believe that there is a
11 substantial volume that has yet to be produced to us. Without
12 having an opportunity to even have a sense of the scope of the
13 discovery, it is hard to commit to an October trial date right
14 now.

15 What we can do -- and it is up to your Honor -- is
16 perhaps have an opportunity to review the volume of discovery
17 in the next couple of weeks and to submit a status report, or
18 something along those lines, to give you a better sense of how
19 we would view the time and resources we need in order to
20 adequately defend the case.

21 THE COURT: All right. Ms. Choi.

22 MS. CHOI: Your Honor, to the extent that it would be
23 helpful to defense counsel, obviously the government is always
24 willing and able to help pinpoint the parts that are most
25 relevant.

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1 With regard to the scope of electronic discovery, it
2 is significant. But I would say with regard to as it applies
3 to Mr. Gross, his role is very specific in the Indictment and I
4 think that we could work with defense counsel to indicate where
5 they should look for the evidence against Mr. Gross in
6 particular as it relates to the bribery payments.

7 THE COURT: All right. I think a status letter update
8 would be helpful. I do want to and encourage you to seek
9 whatever resources you need from the Court to ensure that the
10 time is sufficient, which, as you've just heard, we're
11 balancing multiple needs with respect to the trial date.

12 I think, based on the time that's elapsed, what other
13 counsel have indicated -- Mr. Murgio's counsel has strongly
14 indicated a need for trial not to occur in October; as I've
15 just indicated, Mr. Lebedev's counsel obviously has indicated
16 that it could be done sooner than that -- I'm hopeful that
17 though you are in the case now, that the schedule will still
18 work so long as you pursue it aggressively. And, again, I just
19 want to invite you to seek whatever resources you need from the
20 Court to assist you in that regard.

21 MS. SANTILLO: Thank you, Judge. Is there a
22 timeframe?

23 THE COURT: What do you propose?

24 MS. SANTILLO: 30 days. Is that too much or -- I
25 mean, that would give us a chance to unpack the evidence, work

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1 with the government to kind of pinpoint it, identify any issues
2 that might need to be raised, and to have a realistic
3 timeframe.

4 THE COURT: I'm going to set two weeks as a date for a
5 status update and just try to incentivize a frontward push to
6 make sure that we can keep pushing it forward.

7 MS. SANTILLO: Thank you.

8 THE COURT: So I'll look for that in two weeks. Thank
9 you.

10 All right. Are there -- and to confirm the schedule
11 as it stands, October -- October 31st?

12 MS. CHOI: Yes, your Honor. I think that the
13 previously-set schedule by your Honor was that trial would be
14 October 31st, and from the prior order that your Honor issued
15 with regard to competing motions schedules, defense motions due
16 May 27th, the government's opposition due by June 24th, and the
17 defendants' reply due by July 8th. You reserved a deadline on
18 motions in limine. Also noted, if anyone wanted to file
19 earlier motions, there would be I think a 28-day opposition
20 then and thereafter replies.

21 THE COURT: Thank you. So I've set May 27th as the
22 current date for the filing of any initial motions based on
23 Rule 16 discovery and the like and have invited -- and set up a
24 schedule in light of that outside deadline, inviting counsel to
25 file earlier if you would like, and Mr. Lebedev's counsel had

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1 proposed an earlier schedule. You are certainly welcome to
2 bring motions sooner, and the government will then be required
3 to oppose with the same set of time but by the earlier date and
4 I'll get to them promptly. OK?

5 MR. KLEIN: Judge, this is Brian Klein.

6 THE COURT: Yes.

7 MR. KLEIN: I have a question.

8 In the government's opposition to the severance
9 motion, they have (unintelligible) communicated my
10 (unintelligible) codefendant. It might supersede with
11 additional charges and codefendants. Obviously, only one new
12 codefendant was added now, and from our -- and we would want
13 know if the government plans to supersede again and add
14 additional defendants or other charges, because that could
15 affect the timing of the motions as well as the trial.

16 THE COURT: All right. Thank you.

17 Ms. Choi.

18 MS. CHOI: Your Honor, the government's investigation,
19 as it always does, continues. As of now, we're still
20 investigating these issues. We're cognizant of the Court's
21 motions, and we're taking that into account with regard to our
22 charging decisions.

23 THE COURT: All right. It's going to be soon time to
24 cut off, I think, in light of the scheduling and the need to
25 continue on our trial date.

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1 MS. CHOI: We understand that.

2 Just so he understands, with regard to Mr. Murgio,
3 whatever further charges we bring would be within the scope of
4 the discovery that's already been produced to him, so he would
5 not be prejudiced in that regard.

6 THE COURT: All right. Right. I think the immediate
7 concern is if there are additional codefendants, it's going to
8 begin to -- we're close to the cutoff point at which it will
9 interfere with the schedule.

10 MR. KLEIN: Your Honor --

11 THE COURT: Go ahead.

12 MR. KLEIN: -- if they brought additional charges,
13 we'd have to prepare those and we might want to file motions
14 related to those. So there would be a prejudice in that sense,
15 among others. So that's why we are asking the question,
16 because we have a motion deadline in a few months, and,
17 obviously, we anticipate filing motions related to what is in
18 front of us now.

19 THE COURT: Right. You would certainly be given an
20 opportunity to file any motions related to any new charges.
21 You won't be held to a deadline that you can't meet. So we'll
22 make sure there is a reasonable schedule. But I will ask the
23 government to -- I think a month -- is a month sufficient time,
24 Ms. Choi?

25 MS. CHOI: One moment, your Honor.

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1 (Pause)

2 Your Honor, just because I am going to travel -- I
3 will be traveling as well as Dan for work -- we would just ask
4 for six weeks as the outside deadline. We think we can do it
5 quicker than that, but I don't want to hamper ourselves given
6 our travel schedule.

7 THE COURT: All right. Any Superseding Indictment
8 within six weeks.

9 MS. CHOI: Thank you, your Honor.

10 THE COURT: Yes. Six weeks. Thank you.

11 MR. NOBLE: Judge, just to be clear, oftentimes the
12 government will supersede before trial within 30 days just as a
13 cleanup, to clean up an Indictment, not to bring new charges,
14 not to bring -- or not to add new defendants. So the
15 government would reserve the right to supersede before trial to
16 do a cleanup, so to speak.

17 THE COURT: Yes. Leaving all of those terms
18 undefined, but, yes, I think we all know what we are talking
19 about, additional defendants, additional charges that change
20 the scope of the case in any way within six weeks.

21 MR. NOBLE: Understood.

22 THE COURT: Thank you. All right.

23 Applications? Any defense applications?

24 (Pause)

25 No. Ms. Choi.

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1 MS. CHOI: Yes, your Honor. The government would ask
2 for an exclusion of time under the Speedy Trial Act, 18 U.S.C.
3 3161, to the start of trial, October 31st, so that the parties
4 can continue their negotiations with regard to any potential
5 pretrial dispositions, so that additional discovery can be
6 given to the defendants, and those defendants can review that
7 discovery, and any motions can be filed, if necessary.

8 THE COURT: All right.

9 MR. CREIZMAN: Your Honor, on behalf of Mr. Lebedev,
10 we're going to object to the exclusion of time beyond the
11 earlier version of the motion schedule. Once we file our
12 motions, I guess that would trigger the government's
13 opposition, then our time to reply, and we would oppose any
14 exclusion of time beyond that period.

15 THE COURT: OK. So you don't object, but can you
16 remind me of the dates that you proposed?

17 MR. CREIZMAN: I don't know -- I understand that --

18 THE COURT: Or --

19 MR. CREIZMAN: -- until we file motions, meaning I
20 think that as a matter of law, the time between now and any
21 motions we file is probably excluded as a matter of law, and
22 then it is excluded probably until the motions are fully
23 briefed and maybe the Court decides that. I haven't looked at
24 it for a couple of weeks. But so my -- I mean, we would try to
25 have it in within two to three weeks, any pretrial motions, I

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1 think.

2 THE COURT: OK.

3 MR. CREIZMAN: So, you know, to the extent --

4 THE COURT: You consent to the exclusion of time for
5 the purposes of the reviewing of discovery and preparing any
6 motions and filing those motions that you may bring but you
7 don't consent beyond that?

8 MR. CREIZMAN: Correct. Correct. And, of course,
9 obviously with the Court's schedule, I think we have 28 days
10 for the government, but after that no.

11 THE COURT: OK.

12 MR. CREIZMAN: Thank you.

13 THE COURT: Any other --

14 MR. SOLOWAY: Your Honor, one quick thing, which is --
15 good afternoon.

16 THE COURT: Good afternoon, Mr. Soloway.

17 MR. SOLOWAY: I understand that the government has
18 made a representation that Mr. Murgio would be receiving
19 materials that were sort of related to Mr. Gross. I just
20 wanted to be clear whether or not Mr. Murgio has in fact
21 received all the discovery, not anything new that lies out of
22 the new charges as to Mr. Gross, but anything that we haven't
23 received other than that particular --

24 THE COURT: Right. Understood. So with the caveat
25 that they're going to provide some material that relates to

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1 Mr. Gross not previously provided, otherwise is discovery
2 completed?

3 MR. SOLOWAY: Otherwise is discovery completed as to
4 Mr. Murgio, yes. Thank you, Judge.

5 MS. CHOI: Yes, your Honor. I believe that that is
6 the case, except for the caveat with regard to the emails and
7 the personal data that each of the codefendants now has but has
8 not seen of the other codefendant.

9 THE COURT: Right.

10 MS. CHOI: And also with the caveat that our
11 investigation is ongoing, so there are outstanding subpoenas
12 that we're still working our way through and we'll obviously be
13 producing them as they come.

14 THE COURT: OK, Mr. Soloway?

15 MR. SOLOWAY: Yes, Judge. Thank you.

16 THE COURT: The government's motion for exclusion of
17 time?

18 MR. SOLOWAY: We have no objection to an exclusion of
19 time.

20 MS. SANTILLO: No objection.

21 THE COURT: All right. Thank you.

22 I do find that the ends of justice served by granting
23 an exclusion from speedy trial computations for the period from
24 today's date through October 31, 2016, which I have set as a
25 firm trial date, outweigh the interests of the public and the

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1 defendants in a speedy trial. This time is necessary for the
2 production and completion of production of discovery, which is
3 voluminous, review of that discovery by the defendants, time
4 for the defendants to consider if there are any available
5 motions and, if so, preparing any such motions, time for the
6 parties to consider any negotiations towards a disposition of
7 the case, in the absence of that, time for the parties to
8 prepare for trial.

9 Counsel, anything else that I can address at this
10 time?

11 MS. CHOI: Not from the government, your Honor.

12 MR. SOLOWAY: No, your Honor.

13 MR. CREIZMAN: No, your Honor. Thank you.

14 THE COURT: Mr. Klein?

15 MR. KLEIN: No, your Honor.

16 MS. SANTILLO: No, your Honor.

17 THE COURT: Thank you, everyone. We are adjourned.

18 THE CLERK: All rise.

19 THE COURT: I apologize. Just a moment.

20 We don't have another status conference set, but if
21 there is a request for one, just put it in. If I think one is
22 needed in light of anything that's brought to my attention,
23 I'll set one.

24 So, you know, it is my practice after the motion
25 deadline -- the initial motion deadline that I've set is

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1 completed and either no motions are filed or I've resolved
2 motions, I then put out a schedule for the remainder of the
3 case, setting a final pretrial conference as well as a schedule
4 for in limine and 404(b) motions, proposed voir dire and jury
5 instructions and the like. So that's what lies ahead.

6 Thank you. We are adjourned. Have a good weekend.

7 MS. CHOI: Thank you, your Honor.

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